IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 88 OF 2005

Mrs. Geroge A. Duke (Komal Duke) ... Petitioner

V/s

Asia Steels & Anr. ... Respondents

Mr. Sanjay i/b Sunil & Co. for petitioner

Mr. A.S. Shitole, APP for the State.

None for the respondent No.1

Coram : V.M. Kanade, J.

Dated : 01/04/2005.

P.C. :-

1 I have heard learned counsel for the petitioner and APP for the State.

2 This is an application for recalling process issued by the Metropolitan Magistrate on complaint filed under section 138 read with sec.141 of Negotiable Instruments Act. It is contended by the learned counsel appearing on behalf of the petitioner there are no averments in the petition that the petitioner was in any way involved in the day to day affairs of the said company. It is submitted by the learned counsel for the petitioner that the petitioner had resigned as Director of the company with effect from 31/03/1997 and the cheque in question was issued subsequently.It is, therefore, submitted that the petitioner was not concerned with said liability which was incurred after he had resigned as Director of the company. The

learned counsel has relied on form-32 which is annexed to the petition in support of said submission.

3 It is further submitted that that statutory notice also was not received by her and, therefore, on that count also the complaint is liable to be dismissed qua to petitioner. In my view, all the questions which are raised in this application can be considered only after evidence is adduced by both parties at the time of trial. It is not possible for this court to go into these questions at this stage.

4 In the complaint there are averments to that effect that the accused Nos. 2 to 4 are the Directors of the accused No.1 and that they were incharge and responsible for the business of the accused No.1. Thus, it cannot be said that there are no averments in the complaint at all so far as the petitioner is concerned.The averments in para-8 which indicate that the petitioner was in charge and responsible for business of the accused No.1 company .Since, this is a disputed question which can be decided only by the trial court,all the questions raised in this petition are kept open. It is a settled position in law that if it is proved that the Director had resigned before the issuance of cheque, the Director will not be held liable and if evidence to that effect is filed by the Director and there is no material available with the complainant to controvert this evidence, the Director is

liable to be acquitted.

5 The petitioner being lady however shall be exempted from appearing in the trial court. The Magistrate may call her for the purpose of recording her statement under section 313 of Criminal Procedure Code. Even so far as plea is concerned, the same can be recorded through her advocate. The trial court shall after considering the contentions of the petitioner decide the case as expeditiously as possible on merits and in accordance with law. Accordingly, criminal application stands disposed of.

(V.M. Kanade, J.)